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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,526	02/05/2004	N.R. Gandhi	5333	5398

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EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1781

NOTIFICATION DATE	DELIVERY MODE
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07/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhardtllaw.com

Office Action Summary

Application No.

10/772,526

Applicant(s)

GANDHI ET AL.

Examiner

JYOTI CHAWLA

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's submission filed on April 7, 2010 has been entered. Claims 1 and 11 have been amended and pending claims 1-14 are examined.

Claim Rejections - 35 USC § 112(First paragraph)

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 11, as amended, recites a limitation of "aseptic sour cream product without curdling" (Claim 11, line 13). Applicant's disclosure does not provide a standard for determining whether curdling does not happen at all during fermentation to reach pH of about 4-5. Further, as evidenced by Osaka (US 3937843 already of record, Column 3, lines 20-30) one of skill in the art had knowledge that "As the result of the lactic fermentation, the pH is lowered. In case of the pH being below about 6, the soy milk is normally coagulated." i.e., curdled. Thus, it is not clear that even though recited pH range is "about 4-5", what specific method is used by the applicant to ensure that the sour cream product is produced "without curdling". Applicant's disclosure also does not provide any details. Clarification and /or correction is required.

Claim Rejections - 35 USC § 112 (Second paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11, as amended, recites a limitation of "aseptic sour cream product without curdling" (Claim 11, line 13), which renders the claim indefinite. As recited it is unclear whether the method as recited in claim 11 which involves fermentation of soy with thermophillic bacteria to a pH of about 4 to 5 to produce a product that produces a soy sour cream product without curdling or if the method step of heating to produce aseptic product does not cause any curdling or curd formation. Claim does not clarify whether curdling does not happen at all during fermentation to reach pH of about 4-5. Further, as evidenced by Osaka (US 3937843 already of record, Column 3, lines 20-30) one of skill in the art had knowledge that "As the result of the lactic fermentation, the pH is lowered. In case of the pH being below about 6, the soy milk is normally coagulated." i.e., curdled. Thus, it is not clear that even though recited pH range is "about 4-5", what specific method is used by the applicant to ensure that the sour cream product is produced "without curdling". Clarification and /or correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not

commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

A) Claims 1-3, 5-6, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fridman et al (US 3944676).

References and rejection are incorporated herein and as cited in the previous office action of 10/7/2009.

Regarding the newly added limitation of "to provide a fermented soy composition comprising a mixture of said bacteria and said aqueous soy composition" (Claim 1, lines 5-7 and claim 11, lines 6-8), Fridman's composition as disclosed in Column 3, lines 56-63 will comprise a fermented soy composition comprising a mixture of bacteria and said aqueous soy composition.

Further regarding the newly added limitation of "cooling said fermented soy composition comprising a mixture of said bacteria and said aqueous soy composition" (Claim 11, line 9). Fridman does not specifically teach cooling of soy products, however, soy yogurts or dips or soy beverages are routinely cooled or refrigerated to increase the storage life of the product. Further cooling of fermentation of milk or soymilk products is also well known to retard the growth of fermentative bacterial culture, i.e., slows or stops fermentation. Since Fridman teaches of soy curd, soy cheese and dips etc made from fermented soy, it would have been obvious to one of ordinary skill in the art at the time of the invention to cool the fermented soy product at least for the purpose of slowing the fermentation after a certain level of acidity is achieved based on the desired end product. One would have been further motivated to cool the fermented product for extending the shelf life of the product.

Further regarding the newly added limitation of "aseptic sour cream product without curdling" (Claim 11, line 13), applicant is referred to the rejection under 35 USC 112 (First and Second). Further, it is noted that Fridman discloses substantially the same method of making soy based fermented product having pH in the recited range, thus it would have been obvious to one of ordinary skill in the art that the product as taught by Fridman would have characteristics that are similar to the instantly claimed product and that the fermented soy product made by the method as disclosed by Fridman would react similarly to heat treatment under similar process conditions, absent any clear and convincing arguments and or evidence to the contrary.

B) Claims 4, 7-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fridman et al (US 3944676) in view of IDS reference to Marshall (US 4678673).

References and rejection are incorporated herein and as cited in the previous office action of 10/7/2009.

Response to Arguments

Applicant's arguments filed April 7, 2010 have been fully considered but are moot in view of new grounds of rejection.

Applicant's argument that Fridman discloses of curdling and the invention is not curdled has not been found persuasive based on the reasons above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/
Examiner
Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781